IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE TWENTY SIXTH DAY OF NOVEMBER TWO THOUSAND AND FOUR

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PRESENT

THE HON'BLE MR JUSTICE BILAL NAZKI

and

THE HON'BLE MR JUSTICE P.S.NARAYANA

-

WRIT PETITION NOS.5870, 6017, 6447 OF 2004

AND

W.P.NO.22351 OF 2004

WRIT PETITION NO : 5870 of 2004

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Between:

M.Devanand S/o M.Mallaiah
L.B.Nagar Municipality Ranga Reddy Dist

..... PETITIONER

AND

1 B.Sangameswar S/o B.Ramulu
Working as Deputy Executive Engineer (PH) Qutubullapur,
Ranga Reddy Dist
2 Sadat Hussain S/o Ahmed Hussain
Working as Deputy Executive Engineer (PH) Hyd
3 Mohd. Mahood Ali S/o Mohd. Ahmed Ali
Working as Deputy Executive Engineer (PH) HMWS & SB ,
Hyd
4 Principal Secretary Municipal Administration and Urban Development
Secretariat, Hyd
5 The Engineer in Chief (Public Health)
Government of AP Kashana AC. Guards, Hyd

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ or order or direction more particularly one in the nature of Writ of Certiorari Calling for the records relating to judgment of the Hon'ble AP. Administrative Tribunal dt. 11/03/2004 in OA.No.761/2003 and quash the same by holding it as illegal bad arbitrary and contrary to the well settled principles of service jurisprudence.

Counsel for the Petitioner: MR.J.R.MANOHAR RAO

Counsel for Respondents 1 to 3: P.Balakrishna Murty.

Counsel for the Respondent Nos.4 & 5: GP FOR SERVICES I

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WRIT PETITION NO : 6017 of 2004

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Between:

1 P.MD.Abdul Rahiman S/o Late A.Masthan Saheb
PCC.III, HMW S &SB (S.E on own pay) S.R.Nagar , Hyd
2 S.Prabhakar Sharma S/o S.Narahari Sharma
Project Construction Circle-II Khairtabad, Hyd

..... PETITIONERS

AND

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1 Principal Secretary to Government , Municipal Administration and Urban Develpment Dept.,
State of AP Secretariat, Hyd
2 Engineer in Chief Public Health ,
AC Gurards AP, Hyd
3 Managaing Director Hyderabad Metro Water Supply and Sewerage Board
Hyderabad
4 Md. Imtiaz Ahmed S/o
Chief General Manager (Engg) HMWS & SB Hyderabad
5 B.Javaram Reddy S/o
Public Health Aanatapur Aanatapur Dist
6 C,.V.Rama Baba S/o
Executive Engineer, (PH) O/o Engineer in chief, Public Health
Hyd
7 M.Rama Mohan Reddy
Executive Engineer(PH) Public Helath, Tirupathi
8 P.Monhar Babu S/o
Municipal Engineer, Rajahmundry Municipal Corportation,
Rajahmundry, East Godavari Dist
9 P.Peathamber Rao, S/o.P.Laxmikantha Rao,

P.H.Division, Hyderabad.

10 Ch.Goutham Reddy, S/o.Ramachandra Reddy,
presently working as General Manager, Hyderabad Metropolitan Water Supply and SewerageBoard,
Hyderabad. (RR 9 AND 10 ARE IMPLEADED AS PER COURT ORDER DT.5-4-2004 IN WPMP 8697/2004)

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ order or direction more in the nature of Writ of Certiorari calling for the records relating to order of the Hon'ble AP.Adminstrative Tribunal dt. 19/03/2004 in OA.No.5972/2003 and quash the same by holding it as illegal, bad and arbitrary and further direct the respondent to follow the integrated seniority list of Deputy Executive Engineers dt. 10/01/2003 while effecting promotions to the post of Superintending Engineers and consider the case of the petitioner for promotion to the post of Superintending Engineer by following seniority list dt. 10/01/2003.

Counsel for the Petitioner: MR.J.R.MANOHAR RAO

Counsel for the Respondent Nos.1 to 3: GP FOR SERVICES I

Counsel for Respondents 6 to 8: Mr.C.Srinivas Baba.

WRIT PETITION NO : 6447 of 2004

Between:

D. Sunda Rami Reddy, S/o. D.V. Subba Reddy,
O & M Division No. X, HMWS & SB, Amberpet, Hyderabad.

..... PETITIONER

AND

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1 State of A.P. rep. by its Principal Secretary to Government, Municipal Administration and Urban
Development Department, Secretariat, Hyderabad.

2 Engineer-in-Chief, Public Health, A.C. Guards, Hyderabad.

3 Md. Imtiaz Ahmed, S/o. and age not known, Chief General Manager (Engg.)
HMWS & SB, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ order or direction more in the nature of writ of Certiorari calling for the records relating to order of the Hon'ble A.P. Administrative Tribunal dt. 19-3-2004 in O.A.No.5967 of 2003 and quash the same by holding it as illegal, bad and arbitrary and further direct the respondents to follow the integrated seniority list of Deputy Executive Engineers dt. 10-1-2003 while effecting promotion to the post of Superintending Engineers and consider the case of the petitioner for promotion to the post of Superintending Engineer by following seniority list dt.10-1-2003 or any modified list.

Counsel for the Petitioner: MR.J.R.MANOHAR RAO

Counsel for the Respondent No.1 &2: GP FOR MUNCIPAL ADMN. & URBAN DEV.

Counsel for Respondent No.3: P.Raghavender Reddy.

WRIT PETITION NO : 22351 of 2004

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Between:

1 D. Janardhan Reddy, S/o. D. Gopal Reddy,
O/o. Executive Engineer Division No.1, MCH, Sarddar Mahal, Hyderabad.
2 J. Gajendeer Rao, S/o. J. Meenaji Rao,
Office of the Chief General Manager (Engg) HMWS & SB Transmission Circle, S.R.Nagar, Hyderabad.
3 M. Manik Rao, S/o. Late M. Lingamaiah,
HMWS & SB Sub Division No. III, O & M Division No. III, Goshamahal, Hyderabad.

..... PETITIONERS

AND

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1 G. Rameshwar Rao, S/o. Balakistaiah,
(E), (I/C) H.M.W.S. & S.B. Hyderabad.
2 A. Prabhakar, S/o. A. Veeresham,
in Kapra Municipality.
3 The Government of Andhra Pradesh, Rep. by its Principal Secretary,
Municipal Administration & Urban Development Department, Secretariat, Hyderabad.
4 The Engineer-in-Chief (Public Health) Government of Andhra Pradesh, Kashana,
A.C. Guards, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ order or direction more in the nature of Writ of Certiorari calling for the records relating to judgment of the Hon'ble A.P. Administrative Tribunal dt. 11-3-

2004 in O.A.No.799/2003 and quash the same by holding it as illegal, bad arbitrary and contrary to the well settled principles of service jurisprudence and to pass such other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.

Counsel for the Petitioners: MR.J.R.MANOHAR RAO

Counsel for the Respondent Nos.1 &2: MR.M.SURENDER RAO

The Court at the admission stage made the following :

THE HONOURABLE SRI JUSTICE BILAL NAZKI

AND

THE HONORUABLE SRI JUSTICE P.S.NARAYANA

WRIT PETITION NOS.5870, 6017, 6447 OF 2004

AND

W.P.NO.22351 OF 2004

COMMON ORDER: (per BN,J)

Since all the questions of law and facts are same and the Tribunal has passed a common judgment, these writ petitions are also decided by this common order.

Writ Petition No.5870 of 2004 has been filed challenging the order of the Tribunal dated 11.3.2004 in O.S.No.761 of 2003. Writ Petition No.6017 of 2004 has been filed challenging the order of the Tribunal dated 19.3.2004 in O.A.No.5872 of 2003. Writ petition No.6447 of 2004 has been filed challenging the order of the Tribunal dated 19.3.2004 passed in O.A.No.5967 of 2003. The petitioners in these writ petitions were also parties before the Tribunal. Writ Petition (SR) No.31521 of 2004 has been filed challenging the order of the Tribunal dated 11.3.2004 passed in

O.A.No.799 of 2003 and since the petitioners in this writ petition were not parties before the Tribunal, they sought leave of this Court to appeal.

Facts are taken from Writ Petition No.5870 of 2004. The contention of the writ petitioner is that he was appointed as Municipal Assistant Engineer on 8.9.1982, thereafter he was appointed as Deputy Executive Engineer in A.P. Public Health and Municipal Engineering Service on 21.12.1992. The respondents 1 to 3 have filed O.A. before the Tribunal, challenging the Provisional Seniority list of Deputy Executive Engineers issued vide proceedings dated 10.1.2003, which was subsequently amended by proceedings dated 15.2.2003. The petitioners before the Tribunal contended that G.O.Ms.No.63, dated 8.2.1977 and G.o.Ms.202, dated 14.8.1997 were repugnant to the provisions of the Presidential Orders. It is submitted that while challenging the provisional Seniority List, the respondents 1 to 3 had not raised any valid ground and the O.A. was not maintainable as the Seniority List, which was provisional, could not have been challenged.

Before coming to the contentions of the parties in the writ petition, it will be necessary to have a glimpse of pleadings in O.A.No.761 of 2003. The applicants before the Tribunal claim that they were working as Deputy Executive Engineers in Public Health and Municipal Engineering Departments and were governed by the Statutory Rules through G.O.No.168 Health and Municipal Administration, dated 20.2.1965 (referred as special Rules). All the appointees belong to zone-VI. Zone-VI was constituted under the Presidential order. The Post of Deputy Executive Engineer was a zonal post under the Presidential Order and the next higher post was Executive Engineer, which was a State-wide post. The service constituted under the said Rules is a civil service and the applicants are civil servants. Through G.O.Ms.No.63, the Special Rules were amended providing for direct recruitment from A.P. Municipal Engineering Supervisors Services against the vacancies 4 and 8 in a cycle of 12 vacancies to the post of Deputy Executive Engineer in Public Health and Municipal Engineering Services. The Rules were further amended through G.O.No.202 on 14.8.1997. From the same cycle of 12 vacancies, indiscriminate feeder sources were provided for Municipal Assistant Engineers by promotion/transfer as Deputy Executive Engineers in Public Health and Municipal Engineering Services. The President of India promulgated The Andhra Pradesh Public Employment (Organisation of Local Cadre and Regulation of Direct Recruitment) Order, 1975 popularly known as The Presidential Order under the

powers conferred on him under Article 371-D of the Constitution of India. It was repugnant to the Presidential Order to provide promotion or transfer from a non-civil service to a civil service post. Therefore, for providing transfer/promotion, direct recruitment from Municipal Engineering Service constituted under Section 80 of the A.P. Municipalities Act,1965, was illegal.

G.O.Ms.No.202, dated 14.8.1997 was challenged through O.A.No.6099 of 1997. A Division Bench of the Tribunal through its judgment dated 12.11.2000, dismissed the said O.A. The issue was carried to the High Court through W.P.No.26338 of 2000. A Division Bench of the High Court struck down G.O.Ms.No.202. It was contended that since G.O.Ms.No.202 was struck down being repugnant to the Presidential Order, G.O.Ms.No.63, dated 8.2.1977 could not survive as it had merged with G.O.Ms.No.202. G.O.Ms.No.202 had been given retrospective effect from 22.9.1977. Therefore, it should be assumed that any amendments issued in G.O.Ms.No.63 and G.O.Ms.No.202 were ineffective. It is further contended that direct recruitment against the vacancies 4 and 8 provided under G.O.No.63 dated 8.2.1977 would have to be in conformity with the Presidential Order and any deviation would b e *ultra vires* to the Presidential Order. It was further contended that a definite procedure has been provided under paras-6 to 8 of the Presidential Order and no deviation can be made.

G.O.Ms.No.63 was never put into operation by respondents 1 and 2. The second respondent issued provisional seniority list through proceedings dated 10.1.2003 whereunder despite the judgment of this Court, promotees from Municipal Engineering Services, i.e., respondents 3 to 7, were included in the list and they were placed above the applicants before the Tribunal. So, the provisional seniority list was mainly challenged on two grounds. First ground being that it was repugnant to the Presidential Order, and secondly, it was contended that it was contrary to the judgment of the High Court in Writ Petition No.23668 of 2000.

In the counter affidavit filed before the Tribunal, it was contended that as per the amendments made to the Rules in the year 1977 through G.O.Ms.No.63, the Municipal Engineers were entitled for the vacancies No.4 and 8 in the cycle of 12 vacancies. Thereafter the Government dispensed with the direct recruitment to the post of Executive Engineers. In a cycle of 12 vacancies, four vacancies were

reserved for direct recruitment. In view of dispensing with direct recruitment, four vacancies meant for direct recruitment, were allotted to the Public Health Engineering and Municipal Engineers in the ratio of 1:1 vide G.O.Ms.No.1298 dated 10.9.1993. In terms G.O.Ms.No.1298, Municipal Engineers were entitled for four vacancies out of 13 vacancies and the Public Health Engineers were entitled for remaining vacancies. In the year 1993, one Municipal Engineer, i.e., the third respondent before the Tribunal was promoted as Deputy Executive Engineer. After 1993, no promotions were made to the category of Deputy Executive Engineers till 2000. G.O.Ms.No.202 was issued on 14.8.1997 amending the Special Rules. According to the said amendment, promotions to the post of Deputy Executive Engineers were to be made on the basis of combined seniority list of Public Health Engineers and Municipal Engineers. By following the said amendments, promotions were made to the post of Deputy Executive Engineers. In the year 2000, 37 persons were promoted as Deputy Executive Engineers by following the common seniority list. Out of the 37 persons promoted, 36 belong to Public Health Engineering and only one belongs to Municipal Engineering, who was the fourth respondent before the Tribunal. If the cycle had been followed, Municipal Engineers would get 9 vacancies but only one Municipal Engineer was promoted during 2000. It was further submitted that after amendment in G.O.Ms.No.202, which was held to be unconstitutional, the authorities took up review of promotions to the post of Deputy Executive Engineer. Promotions were made in the year 2002 by reviewing the earlier promotions and 18 Assistant Executive Engineers/Assistant Engineers were promoted as Deputy Executive Engineers. Out of 18 Assistant Engineers so promoted, 7 belong to Municipal Engineering Services and 11 belong to Public Health Services. It is submitted that 7 Municipal Engineers were promoted as per the cycle prescribed without following the combined seniority list. Therefore, the Municipal Engineers were in fact promoted as per the quota prescribed under the Rules and they were not promoted in excess of their quota. In fact, out of 45 promoted during 2000 and 2002, the Municipal Engineers were entitled to 15 vacancies but only 8 were promoted, therefore, no injustice has been caused to the Public Health Engineers.

In view of these pleadings, it becomes necessary to ascertain the effect of the Judgment of this Court in Writ Petition No.23668 of 2000 because the whole controversy revolves around the interpretation of that judgment. In that writ petition, two questions were framed for consideration by this Court:

1. "Whether transfer by promotion of an employee from a service constituted under a local authority like Municipalities under an act of the State Legislature and the Rules made there under could be brought into a civil service by rules made under Article 309 of the Constitution of India?

2. Are the Rules so made not repugnant to and violative of the provisions of the Andhra Pradesh Public Employment (Organisation of Local Cadres and Regulation of Direct Recruitment) Order, 1975 popularly known as the Presidential Order ?"

And ultimately the Court came to the conclusion;

> "For the reasons aforementioned we are of the opinion that the impugned G.O. cannot be sustained and it is set aside accordingly. The writ petition is allowed."

In view of the same, it is appropriate to reproduce G.O.Ms.No.202, dated 14.8.1997 and G.O.Ms.No.63, dated 8.2.1977. G.O.Ms.No.202 read as under:

GOVERNMENT OF ANDHRA PRADESH

ABSTRACT

PUBLIC SERVICES – Andhra Pradesh Public Health and Municipal Engineering Service – Special Rules – Certain Amendments – Issued.

Municipal Administration & Urban Development (E1) Department

G.O.Ms.No.202 M.A. Dated 14th August, 1997

Read the following:-

1. G.O.(Ps) No.168 MA, dated 28-2-1965
2. G.O.Ms.No.328 MA dated 18-6-1995
3. G.O.Ms.No.15 MA dated 7-1-1997
4. From Engineer-in-Chief (Public Health) Hyderabad Letter No.1961/CS3/97 dated 18-2-1997 and 9-4-1997.
5. G.O.Ms.No.247 M.A. dated 3-5-91.
6. From the Secretary, APPSC, Hyderabad Lr.No.2486/RR/3/97 dated 29-7-97.

O R D E R:-

In the reference 3rd read above orders have been issued for unification and of services of Municipal Assistant Engineers and Assistant Executive Engineers and Assistant Engineers/Assistant Executive Engineers of Public Health cadre in each zone for the purpose of maintenance of a common seniority for promotion to the post of Deputy Executive Engineers, deleting the rule of reservation being adopted in the second occasion while promoting the personal belonging to Municipal Engineering Service, to the cadre of Deputy services of Municipal Engineering Personnel, to provide equal promotion avenues in all zones in respect of Municipal as well as public Health Engineers.

2. The A.P. Administrative Tribunal in its interim order dated 30-1-1997 in O.A.NO.394/97 observed that the Interim order does not preclude the authorities to take steps to amend the Rules. If they an distress.

3. In the reference 4th read above the Engineer-in-Chief (Public Health) has reported that the rule 4 of Andhra Pradesh Public Health and Municipal Engineering Service Rules, relating to Special concentration of appointment following General Rule 22 be delegated as there will be no direct recruitment to the post of Deputy Executive Engineers by virtue of proposed amendment to rule 3 of Andhra Pradesh Public Health and Municipal Engineering Service. Government after consideration of the proposals of Engineer-in-Chief (Public Health) have decided to amend the rules in pursuance of the orders issued in the G.O. 3rd read above.

4. The following notification will be published in the extra-ordinary issue of the Andhra Pradesh Gazette:-

NOTIFICATION

In exercise of the powers conferred by the proviso to Article 309 of the Constitution of India, the Governor of Andhra Pradesh hereby makes the following amendments to the Andhra Pradesh Public Health and Municipal Engineering Service Rules, 1965, issued in G.O.Ms.No.168 M.A. dated 28th Feb. 1965.

AMENDMENT

In the said Rules –

1. In the Table under Rule 3, for the entries under Column (2) against category 3 under column (1) thereof, the following shall be substituted, namely;-

	Category	Method of Appointment
1.	(2)	
	3. Deputy Executive Engineers	The vacancies of Deputy Executive Engineer shall be filed in the Following order of rotation in Every cycle of 12 vacancies.
		1st vacancy By promotion from the Asst.Exe Engineers (Public Health) of the Andhra Pradesh Public Health and Municipal Engineering services or The Municipal Assistant Executive Engineers by transfer from Mpl. Engineering Service.
		2nd vacancy By promotion from the Asst.Exe. Engineers(Public Health) of the Andhra Pradesh Public Health and Municipal Engineering Service of The Municipal Assistant Executive Engineers by transfer from Mpl. Engineering Service.
		3rd vacancy By recruitment by transfer from D'man 1st grade or Special grade of Andhra Pradesh Public Health and Municipal Engineering Subordinate Service, preference shall given to Possessing B.E. Degree

Qualification

4th vacancy By promotion from the Municipal
Asst. Engineer Andhra Pradesh
Municipal Engineering Service or
Asst. Engineer (Public Health) by

Transfer from the Andhra Pradesh
Public Health and Municipal Engg.,
Subordinate Service.

5th vacancy By promotion from the Assistant
Engineer(Public Health) by
Transfer from the Andhra Pradesh
Public Health and Municipal
Engineering Subordinate service or
The Municipal Assistant Engineer by
Transfer from the Municipal Engg.,
Service.

6th vacancy By promotion from the Assistant
Executive Engineer(Public Health) of
the Andhra Pradesh Public Health and
Municipal Engineering Service or
the Municipal Asst. Engineer by
Transfer from the Andhra Pradesh
Municipal Engg., Service.

7th vacancy By promotion from the Asst.Exe.
Engineer(Public Health); of the
Andhra Pradesh Public Health and
Municipal Engineering Service or
the Municipal Asst. Exe.

Engineering Service.

8th vacancy By promotion from the Municipal
Asst.Engineer of the Andhra Pradesh Municipal Engineering Service or
the Asst. Engineer (Public Health) of
the Andhra Pradesh Health and
Municipal Engg.Subordinate service.

9th vacancy By promotion from the Asst. Exe.
Engineers/Mpl.Assistant Executive
Engineers possessing the post
Graduate qualification. Preference
Shall be given to the post graduate
In public health Engineering only
When all the other qualifications
Being equal. The senior among the
Said Asst.Executive Engineer/Mpl.
Asst Executive Engineer shall be
Considered against this vacancy. If
No qualified Assistant Exe.Engineer
/Mpl. Asst.Executive Engineer is
available the said vacancy shall go
to the Asst.Executive Engineers or
by recruitment by transfer from
Assistant Engineers of the Andhra
Pradesh Public Health and Municipal
Engineering Subordinate service.

10th vacancy By promotion from the Asst.Exe.
Engineer (Public Health) of the
Andhra Pradesh Public Health and
Municipal Engineering Service or
the Municipal Asst.Exe. Engineer

by transfer from Municipal Engg.,

service.

11th vacancy By promotion from the Asst. Exe.

Engineer (Public Health) of the

Andhra Pradesh Public Health and

Municipal Engineering Service or

The Municipal Asst. Exe. Engineer

By transfer from Municipal Engg.,

Service.

12th vacancy By promotion from the Asst. Exe.

Engineer (Public Health) from the

Andhra Pradesh Public Health and

Municipal Engineering subordinate

Service or the Municipal Assistant

Engineer by transfer from

Municipal Engineering Service.

2. In Rule 4, the words 'Deputy Executive Engineer and' shall be omitted.

3. The amendment hereby made shall be deemed to have come into force with effect from 22-9-1977.

(BY ORDER AND IN THE NAME OF THE GOVERNOR OF ANDHRA PRADESH)

Sd/-xxx

PRL. SECRETARY TO GOVT.

To

All concerned

G.O.Ms.No.63 M.A. reads as under;

GOVERNMENT OF ANDHRA PRADESH

ABSTRACT

Public Services – Andhra Pradesh Public Health and Municipal Engineering Services- Special Rules- Certain Amendments – Issued.

Housing, Municipal Administration & Urban Development Department

G.O.Ms.No.63 M.A Dated the 8th day of Feb. 1977

Read the following:-

1. G.O.Ms.NO.165 MA., dated 20-2-1965
2. From the Chief Engineer (Public Health) Letter No. 1212/108/GSI/63 dated 25-8-1970
3. From the Andhra Pradesh Public Service Commission, Lr.No. 1763/51 dated 20-1-1977.

O R D E R:-

The following notification shall be published in the Andhra Pradesh Gazettee:-

NOTIFICATION

In exercise of the powers conferred by the proviso to Article 309 of the Constitution of India, the Governor of Andhra Pradesh hereby makes the following amendments to the Andhra Pradesh Public Services and Municipal Engineering Service Rules issued in G.O. (Ps) No.168 M.A. dated 20-2-1965:-

1. In the said Rules :-

(1) in the Table under Rule 3, for the entries in column (2)

pertaining to Item 3 'Assistant Engineers', the following

entries shall be substituted, namely:-

1st vacancy : By promotion from the Junior Engineers or
by transfer from Supervisors of the Andhra
Public Health and Municipal Engineering
Service;

2nd Vacancy : By direct recruitment

3rd Vacancy : By recruitment by transfer from
Draughtsman of the Andhra Pradesh
Public Health and Municipal Engg.,
Subordinate Service, preference
Being given a Draughtsman with
B.E. Degree Qualification.

4th Vacancy : By direct recruitment from
Municipal Superintendents of the
Andhra Pradesh Municipal Engg.,
Supervisors Service. The direct
Recruitment should also cover the
Non-substantive vacancies of the
Category.

5th Vacancy : By promotion from the Junior
Engineers; or by recruitment by
Transfer from Supervisors of
Andhra Pradesh Public Health and
Municipal Engineering Subordinate
Service.

6th Vacancy : By direct recruitment

7th Vacancy : By promotion from the Junior

Engineers: or by direct recruit-

Ment by transfer from Supervisors

Of the Andhra Pradesh Public

Health and Municipal Engineering

Subordinate Service.

8th Vacancy : By direct recruitment from Mpl.

Supervisors of the Andhra Pradesh

Municipal Engineering Supervisors

Service. The direct recruitment

Should also cover the non-

Substantive vacancies of the

Category).

9th Vacancy : By promotion from the Junior

Engineers or by direct recruitment

By transfer from Supervisors of the

Andhra Pradesh Public Health and

Municipal Engineering Subordinate

Service;

10th Vacancy : By direct recruitment

11th Vacancy : By promotion from the Junior

Engineers or by recruitment by

Transfer from Supervisors of the

Andhra Pradesh Public Health and

Municipal Engg., Subordinate

Service.

12th Vacancy : By direct recruitment.

Provided that in the exigencies of service, the Government shall have the power to appoint by transfer from the Assistant Engineers of Public Works Branch of the Andhra Pradesh Engineering Service or for the special reasons from any other Service."

2. In the Table under Rules, for the entries pertaining to Item 3, Assistant Engineers in column (1), (2) and (3) the following entries shall be substituted namely:-

3. Assistant Engineers	(i) Direct Recruitment	1) A degree in Civil or Mechanical Engineering in any University in India established or incorporated by or under a Ministerial Act, Provincial Act or a State Act or an Institution recognised by the University Grants Commission or any Other equivalent qualification. 2) Must not have completed _ _ _ of the years of the 1st July of year in which the direct recruitment is…. Provided that these perusing the M.H. (P.H.) shall be allowed age concession to the extent of two years. Preference shall be given To persons possessed five Years experience in investigating or execution of other supply and Drainag

schemes.

(ii) Direct recruit- a) A degree in Civil or Mech-
ment from anical Engineering or any
the Municipal University in India esta-
Supervisors blushed or incorporated
Of the A.P. by or under a control Act,
Municipal provincial Act or a State
Supervisors Act or an Institution reco-
Service gnised by the University
grant Commission or any
Other equivalent quail-
fication Or

b) Must have the upper sub-
ordinate or incontiate in
Civil Engg.(LCE) Diploma
Of the College of Engg.,
Guindy or an Equivalent
Qualification with 2 years
Practical experience out
Of which 5 years shall be
In Sanitary Engineering.

Provided that five years practical experience in Sanitary Engg., shall not be examined in the case of persons possessing 15 years practical experience or

c. Must have the Upper Subordinate officers of the Osmania University with 20 years of practical experience of the L.C.E. Diploma of the College Engineering Guindy with .... Years of practical experience or

Must not have completed 50

years of age.

iii) Recruitment: a) A degree in Civil Mecha
anical Engineering of any
University in India esta-
blished or incorporated
by or under a control Act,
Provincial Act or a State
Act or an Institution reco-
gnised by the University
Grants Commission or any
other equivalent quail-
fication or:

b. Must have the upper sub-
Ordinate or Lkicentist in
Civil Engg.(LCE) Diploma
of the College of Engg.,
Guindy or an equivalent
Qualification with 10 years practical experience out of which 5 years shall be in Sanitary Engineering

Provided that five years practical experience in Sanitary Engg., shallnot be required in the case of persons possessing 15 years practical experience; or

c. Must have the Upper Subordinate Diploma of the Osmania University with 20 years of practical experience or the Lower Subordinate Diploma of the College of Engineering Guindy with 20 years of practical experience.

Must have rendered as Municipal Engineer, Gr.III or as Draughtsman for a

		Period of not less than five years.
iv) By promotion: A degree in Civil or Mech. Engineering of any University in India established or incorporated	by or under a Central Act, Provincial Act or a State	Act or an institution recognized by the University Grants Commission or any other equivalent qualification and merit put in service as Junior Engineer or Gazetted Mpl. Engineers Grade-III for a period of not less than 5 years.

Sd/- G.V.RAMAKRISHNA

SECRETARY TO GOVERNMENT

Admittedly G.O.Ms.No.63 and subsequent G.O.Ms.No.202, both were issued amending the G.O.Ms.No.168, dated 28.2.1965 but G.O.Ms.No.202 has now been quashed. Therefore, the question remains whether G.O.Ms.No.63 would become operative on quashing of G.O.Ms.No.202. The question is whether on quashing of G.O.Ms.No.202, G.O.Ms.No.63 dated 8.2.1977 revives or not. The Tribunal held that G.O.Ms.No.63 does not revive on quashing of G.O.Ms.No.202.

In this case, reliance is placed by the petitioners on a decision in ***FIRM A.T.B.MEHTAB MAJID AND CO., Vs. STATE OF MADRAS AND ANOTHER*** wherein the Supreme Court held:

> *" It has been urged for the respondent that if the impugned rule be held to be invalid, old R. 16 gets revived and that the tax assessed on the petitioner will be good. We do not agree once the old rule has been substituted by the new rule, it ceases to exist and it does not automatically get revived when the new rule is held to be invalid"*

Reliance is also placed on ***B. N. TEWARI v. UNION OF INDIA AND OTHERS.*** In this case there was a carry forward rule in 1952 and there was a carry forward rule of 1955. Carry forward rule of 1955 became subject matter of a writ petition before the Supreme Court In ***DEVADASAN v s UNION OF INDIA.*** The Supreme Court in that Judgment held;

> " In the result the petition succeeds partially and the carry forward rule as modified in 1955 is declared invalid."

In the light of this decision, the question before the Supreme Court was whether the carry forward rule of 1952 can be said to be in existence. The Supreme Court answered this question in the following terms:

> "That, however, does not mean that this Court held that the 1952-rule must be deemed to exist because this Court said that the carry forward rule as modified in 1955 was declared invalid. The carry forward rule of 1952 was substituted by the carry forward rule of 1955. On this substitution the carry forward rule of 1952 clearly ceased to exist because its place was taken by the carry forward rule of 1955. Thus by promulgating the new carry forward rule in 1955, the Government of India itself cancelled the carry forward rule of 1952. When therefore this Court struck down the carry forward rule as modified in 1955 that did not mean that the carry forward rule of 1952 which had already ceased to exist, because the Government of India itself cancelled it and had substituted a modified rule in 1955 in its place, could review. We are therefore of opinion that after the judgment of this Court in Devadasan's case AIR 1964 SC 179 there is no carry forward rule at all, for the carry forward rule of 1955 was struck down by this Court while the carry forward rule of 1952 had ceased to exist when the Government of India substituted the carry forward rule of 1955 in its place. But it must be made clear that the judgment of this Court in Devadasan's case, AIR 1964 SC 179, is only concerned with that part of the instructions of the Government of India which deal with the carry forward rule; it does not in any way touch the reservation for scheduled castes and scheduled tribes at 121/2 % and 5 %, respectively; nor does it touch the filling up of scheduled tribes vacancies by scheduled caste candidates where sufficient number of scheduled tribes are not available in a particular year or vice versa. The effect of the judgment in Devadasan's case, AIR 1964 SC 179, therefore is only to strike down the carry forward rule and it does not affect the year to year reservation for scheduled castes and scheduled tribes or filling up of scheduled tribe vacancies by a member of scheduled castes in a particular year if a sufficient number of scheduled tribe candidates are not available in that year or vice versa. This adjustment in the reservation between scheduled castes and tribes has nothing to do with the carry forward rule from year to year

> either of 1952 which had ceased to exist or of 1955 which was struck down by this Court. In this view of the matter it is unnecessary to consider whether the carry forward rule of 1952 would be unconstitutional, for that rule no longer exists.

Reliance was also placed on **K.V.KAMATH Vs. RANGAPPA.** This judgment accepted the principles laid down in **A.T.B.MEHTAB MAJID'S** case (2 supra). In that case, Rule 16 of the Madras General Taxes Rules,1939 was impugned. A new Rule 16 was substituted for old rule by a Publication on 7.9.1955. This rule had to come into effect from 1.4.1955. The Court held that the new rule of 16(2) was invalid because the provisions of that rule contravened Article 304-A of the Constitution of India. Thereupon it was urged before the Court that if the impugned rules were invalid, the old rule 16 would get revived so that the tax assessed on the basis of old rule, could hold good. The Court rejected the submission in the following terms;

> "once the old rule has been substituted by the new rule, it ceases to exist and does not automatically get revived when the new rule is held to be invalid."

In the case of **INDIAN EXPRESS NEWSPAPERS (BOMBAY) PRIVATE LTD., And OTHERS v. UNION Of INDIA AND OTHERS**, a notification gratning exemption on March 1, 1981 had been quashed by the Court. The question that arose was whether the earlier notification dated 15.7.1977 would get revived. The Court held that on striking down of the subsequent notification, the earlier notification does not revive.

On the other hand the counsel for the other side has relied on a judgment reported in **STATE Of MAHARASHTRA v. THE CENTRAL PROVINCES MANGANESE ORE CO. LTD.** In this case a question was framed and an answer was given by the Supreme Court which reads as follows:

> "Q. 2. Was the Tribunal right in holding that Explanation (II) to Section 2 (g) as was originally embodied in the Sales Tax Act, 1947, got restored on the statute-book because of the unconstitutionality of the substituted explanation enacted in the Sales Tax (Amendment) Act, 1949?
>
> Ans. There is no question of restoration of unamended Explanation (II) to Section 2 (g) as the purported amendment itself did not take effect. Hence, the unamended provision stood as it was before the attempted

> amendment. The question framed rests on a misconception that there was something to be restored. As nothing was taken away, nothing was there to be restored. And there was nothing added or substituted.

The learned counsel submits that since the G.O.Ms.No.202 was set aside as unconstitutional on the basis of the law laid down in this judgment, the old G.O., i.e., G.O.Ms.No.63 got restored as it has not been substituted. This judgment was considered by the Supreme Court in **INDIAN EXPRESS NEWSPAPER'S** case (5 supra) to which a reference has been given herein above and it was distinguished on the ground that the amendment had not at all taken place because of the want of assent of the Governor General. The Court also noted that this case was distinguished rightly from **B. N. TEWARI'S** case (2 supra) and the Court clarified,

> " we may also state that the legal effect of an earlier law when the latter law enacted in its place is declared in valid does not taken merely upon use of words like 'substitute' or 'supersede'. It depends upon totality of the circumstances and the context in which they are used."

Going by the law laid down by the Apex Court as we mentioned hereinabove, we do not find any ground to interfere with the finding of the Tribunal that the G.O.Ms.No.63 could not revive.

Some apprehensions were expressed at the bar about the correctness of the judgment of the Division Bench quashing G.O.Ms.No.202. But we believe that such an apprehension is misplaced in view of the subsequent judgment of the Supreme Court reported in **V.JAGANNADHA RAO AND OTHERS vs STATE OF A.P., AND OTHERS.** In this case the Supreme Court was considering the same controversy vis-à-vis Article 371-D and the rules made under Article 309 of the Constitution of India. In this case reliance was placed on **STATE OF A.P. vs V.SADANANDAM.** Much reliance was also placed on **SADANANDAM'S** case before this Court as well as before the Division Bench, which struck down the G.O.Ms.No.202. In **V.JAGANNADHA RAO'S** case the Supreme Court held that the **SADANANDAM'S** case was not correctly decided. In Para 21, it was held;

> " In *Sadanandam Case* while considering the legality of amended provisions of the Rules framed by the State Government and in sustaining the same, this Court was of

the opinion that as the aforesaid Rules had been framed under Section (3) of the Andhra Pradesh Ordinance 5 of 1983 read with para 5(2)(a) of the Presidential Order, the conclusion of the Tribunal in striking down the rule is erroneous. The Court was of the opinion that mode of recruitment and category from which the recruitment to a service should be made are policy matters exclusively within the purview and domain of the executive and it would not be appropriate for judicial bodies to sit in judgment over the wisdom of the executive in choosing the mode of recruitment or the categories from which the recruitment should be made. In our considered opinion, both the aforesaid reasons do not constitute a true interpretation of the provisions of the Presidential Order. At the outset, it may be noticed that Article 371-D(10) of the Constitution unequivocally indicates that the said article and any order made by the President thereunder shall have effect notwithstanding anything in any other provision of the Constitution or in any other law for the time being in force. Necessarily, therefore, if it is construed and held that the Presidential Order prohibits consideration of the employees from the feeder category from other units then such a rule made by the Governor under the proviso to Article 309 of the Constitution will have to be struck down. Then again in exercise of powers under para 5(2) of the Presidential Order if the State Government makes any provision, which is outside the purview of the authority of the Government under para 5(2) of the Order itself, then the said provision also has to be struck down. Having construed the Rules framed by the Governor under proviso to Article 309 of the Constitution from the aforesaid standpoint, the conclusion is irresistible that the said Rule to the extent indicated by the Tribunal is constitutionally invalid and its conclusion is unassailable. In the case in hand, the impugned provisions do not appear to have been framed in exercise of powers under para 5(2) of the Presidential Order and as such the same being a Rule made under proviso to Article 309 of the Constitution, the Presidential Order would prevail, as provided under Article 371-D(10) of the Constitution. Even if it is construed to be an order made under para 5(2) of the Presidential Order, then also the same would be invalid being beyond the permissible limits provided under the said paragraph. In this view of the matter, the Tribunal rightly held the provision to the extent it provides for consideration of employees of the Factories and Boilers Units to be invalid, for the purpose of promotion to the higher post in the Labour Unit and as such we see no justification for our interference with the said conclusion of the Tribunal and the earlier judgment of this Court in *Sadanandam Case* must be held to have not been correctly decided. As a consequence, so would be the case with *Satyanarayana Rao case.*"

For the aforesaid reasons, we do not find any merits in these writ petitions and the same are accordingly dismissed. No order as to costs.

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BILAL NAZKI, J

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P.S.NARAYANA,J

DATED: -11-2004

MDAA

Copy to:

1. The Principal Secretary, Municipal Administration and Urban Development Secretariat, Hyd
2. The Engineer in Chief (Public Health)
Government of AP Kashana AC. Guards, Hyd

3 Managaing Director Hyderabad Metro Water Supply and Sewerage Board

Hyderabad

4. Two CCs to G.P.for Services-I, High Court of A.P., Hyderabad.(out)

5. Two C.Cs to G.P.for Municipal Administration, High Court of A.P., Hyd.(out)

6. Two C.D.copies.